

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: MUGASHA, J.A., MWANDAMBO, J.A., And LEVIRA, J.A.)**

**CIVIL APPEAL NO. 164 OF 2016**

**NYABAZERE GORA.....APPELLANT**

**VERSUS**

**CHARLES BUYA.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania  
at Mwanza)**

**(Sumari, J.)**

**dated the 20<sup>th</sup> day of August, 2013  
in**

**Misc. Land Application No. 43 of 2011**

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**JUDGMENT OF THE COURT**

3<sup>rd</sup> & 6<sup>th</sup> December, 2019.

**MUGASHA, J.A.:**

The respondent successfully sued the appellant before the Ward Tribunal of Salama, Bunda District on a claim of ownership of a piece of land within Salama 'A' Village. The appellant unsuccessfully appealed to the District Land and Housing Tribunal at Musoma (the DLHT) which dismissed his appeal. Since the appellant had delayed to file an appeal before the High Court, she unsuccessfully lodged an application seeking extension of

time to lodge an appeal whereby the application was dismissed and hence the present appeal.

To understand what underlies this appeal, a brief background to this appeal is to the effect that, way back in 2010, the respondent lodged a case against the appellant seeking to be declared a lawful owner of a piece of land which the respondent had cleared for agricultural purposes in 1985. During the trial before the Ward Tribunal, the appellant contested the case claiming to have been allocated the land in question as a plot by the Village Council of Salama 'A' Village for the purposes of constructing a building. Unimpressed by the appellant's account and upon being satisfied that she had encroached into the respondent's land, the Ward Tribunal ruled in favour of the respondent who was declared the rightful owner of the suit premises. The appellant's first appeal before the DLHT was unsuccessful whereby, in its decision handed down on 21/2/2011 it ruled in favour of the respondent and sustained the verdict of the Ward Tribunal. Still undaunted, as the appellant was desirous to pursue an appeal before the High Court, but had run out of time, initially, she unsuccessfully applied for extension of time to lodge an appeal against the decision of the DLHT. The

application was dismissed on 20/8/2013 upon the following Order by the learned High Court Judge which reads thus:-

*"The record shows that the judgment was delivered on 21/02/2011 and according to the applicant's affidavit she requested for copies of judgment which were supplied to her on 15/04/2011. However, she could not file this application until 16/05/2011 after the elapse of 30 days.*

*The applicant has not given or shown to this court why after she was supplied with copies of judgment she failed to file this application until after 30 days elapse. This shows how unserious she was. I tend to believe the respondent that it is after the respondent filed his bill of costs that is when the applicant waked up and think of appeal. **She is in fact delaying the respondent's rights unnecessarily; the intended appeal is an***

***afterthought. I dismiss the application with costs”***

*[Emphasis supplied].*

The bolded expression contains extraneous issues considered by the Judge. We shall revert to it at a later stage.

It is against the said backdrop, the appellant is now in this Court seeking the reversal of the decision of the High Court of Tanzania refusing her an extension of time to lodge the respective appeal out of time from the decision of the DLHT in Land Appeal No. 129 of 2010 originating from Land Dispute No. 34 of 2009 before the Ward Tribunal of Salama. The grounds of complaint are as follows:-

- 1. That, the High Court of Tanzania at Mwanza erred in Law to dismiss the Application after the lapse of 30 days, whereas the time of limitation for a person aggrieved by the Decision of the District Land and Housing Tribunal to the High Court is sixty days a per the provisions of section 38 (1) of the Land Disputes Courts Act, Cap 216 RE. 2002.*

2. *That the High Court erred in law in dismissing the Application on mere suspicious belief that the Appellant filed an Application for extension of time to lodge an appeal out of time, after the respondent had filed Bill of Costs, a fact which amounts to total denial of Right of being properly heard, hence a violation of Principles of Natural Justice.*
3. *That, the High Court erred in law when it failed to take into consideration the fact, the Appellant's delay to file Appeal before the High Court was the Trial District Land and Housing Tribunal's inability to supply appellant the requisite documents in time, a fact which led Appellant to apply before the High Court for extension of time to lodge an appeal which was dismissed by the High Court.*

To buttress the grounds of appeal, the applicant filed written submissions which basically *echoe* the grounds of complaint to the effect that, the delay to lodge the appeal before the High was not due to the appellant's fault but rather, the delayed supply of the judgment of the DLHT.

In view of the above, the appellant is now challenging the said dismissal whose thrust brings to question the learned Judge's refusal to enlarge time under section 38 (1) of the Land Disputes Courts Act [CAP 216 RE.2002] (the LDCA).

At the hearing of the appeal before us, parties appeared in person unrepresented. When invited to address the Court on the appeal, the appellant adopted the written submissions without more. In the submissions, she basically faulted the High Court's refusal to extend time to appeal to the High Court but expressed her belief that the application before the High Court had met the threshold requirement of sufficient cause on account of the delayed supply of the impugned judgment and proceedings by the DLHT. She thus urged us to allow the appeal.

On the other hand, the respondent opposed the appeal on ground that, before the High Court the appellant did not account for the delay to lodge the application for extension of time to appeal against the decision of the DLHT. He thus urged us to dismiss the appeal.

Having considered the submissions of the parties and examined the record of appeal, the crucial issue for our determination is whether there is

any justification for this Court to interfere with the High Court's exercise of its discretion under the proviso to section 38 (1) of the Land Disputes Courts Act CAP 216 RE. 2002 which vest the High Court with discretion in the following terms:

*(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division):*

***Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.***

In terms of the cited provision the extension of time is a matter of discretion on the part of the High Court which must be judiciously be exercised to consider if there is good and sufficient cause for the delay. As

to what the applicant has been doing since becoming aware of the fact that he had not filed an appeal after obtaining the impugned decision and proceedings is one of the questions that shall guide us in the determination of the existence or otherwise, of good cause in the application before the High Court which is a subject of this appeal. This Court dealt with a similar question in **ROYAL INSURANCE TANZANIA LIMITED VS. KIWENGWA STRAND HOTEL LIMITED**, Civil Application No. 116 of 2008 (unreported) where an applicant therein was required to show sufficient reason. The Court had stated:-

*"It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith."*

In the supporting affidavit the appellant had deposed to have made a follow up for copies of judgment and proceedings from the date of judgment until when she was supplied with the same on 15/4/2011. She averred to have been unable to purchase copies because the Tribunal Clerk did not have Exchequer Receipts. However, the applicant did not annex



the affidavit of the Clerk to confirm if at all he/she had run out of the exchequer receipts to enable the appellant herein to purchase the documents in question which renders her assertion on absence of the Tribunal clerk not supported by any proof. That apart, the appellant did not disclose as to when she managed to purchase the documents in question and why did she not apply for extension of time earlier than 16/5/2011 when the application before the High Court was filed.

It is settled position of the law that, in an application for extension of time, the applicant has to account for every day of the delay: See- **BARIKI ISRAEL VS. THE REPUBLIC**, Criminal Application No. 4 of 2011(unreported). The appellant's suggestion that she had been pursuing the matter which made her to delay to file an appeal, is discrepant because after the expiry of the time limit of 60 days on 20/4/2011, she did not account for the 25 days' delay considering that she had been supplied with the impugned decision of the DLHT on 15/4/2011.

In view of the above as earlier intimated, is this one of the instances warranting interference of the discretion of the High Court? It is settled position of the law that this Court cannot interfere with the High Court's

exercise of its discretion unless it is satisfied that the decision was made on a wrong principle or that certain factors were not taken into account. This was emphasized in the case of **MBOGO AND ANOTHER VS. SHAH** [1968] 1 EA 93, where the Court said:

*"I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that the decision **is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.**"*

[Emphasis added]

We wholly subscribe to the above standpoint, which we think is equally applicable to the instant appeal questioning a High Court Judge's exercise of his discretion.

In view of what we have endeavoured to discuss, in particular what had transpired before the High Court, we are of the clear opinion that, though the learned High Court Judge had considered extraneous issues, as earlier pointed out which was irregular, however she judiciously exercised discretion in refusing the appellant extension of time to lodge an appeal against the decision of the DLHT on account of the appellant having not exhibited good and sufficient cause. In consequence, we dismiss the appeal in its entirety with no order as to costs.

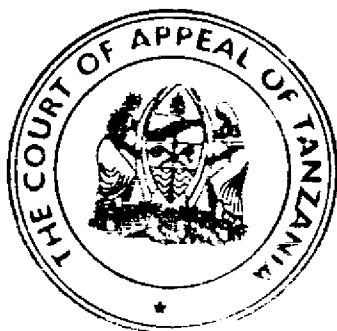
**DATED at MWANZA** this 4<sup>th</sup> day of December, 2019.

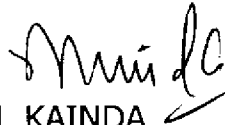
S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

M. C. LEVIRA  
**JUSTICE OF APPEAL**

This Judgment delivered this 6<sup>th</sup> day of December, 2019 in the presence of the Appellant and Respondent in person, is hereby certified as a true copy of the original.



  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**